

STATE OF NEW HAMPSHIRE

10TH CIRCUIT COURT - DISTRICT DIVISION - HAMPTON

STATE OF NEW HAMPSHIRE,) District Division Case No.
) 441-2024-CR-00353
 Complainant,)
 vs.) Hampton, New Hampshire
) July 10, 2024
) 1:03 p.m.
 DESTINIE L. BERARD,)
)
 Defendant.)
 _____)

HEARING ON STATUS OF COUNSEL
BEFORE THE HONORABLE SCOTT MURRAY
JUDGE OF THE CIRCUIT COURT - DISTRICT DIVISION

APPEARANCES:

For the State: John Ventura, Esq.
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Pro Se Defendant: Destinie L. Berard
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Audio Operator: Electronically Recorded
Not Monitored

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1 (Proceedings commence at 1:03 p.m.)

2 THE COURT: All right. This is the State of New
3 Hampshire v. Destinie Berard. Destinie Berard.

4 Attorney Ventura, you appear for the State?

5 MR. VENTURA: I do, Your Honor. Thank you.

6 THE COURT: All right. I see that an order was
7 issued by Judge Zaino yesterday. Or this was on the 9th,
8 yesterday. So this hearing remains on for status of counsel.
9 Is that accurate?

10 MR. VENTURA: That's as far as I know, Your Honor,
11 because there was -- well, yeah, as far as I know, this is
12 just for status of counsel.

13 THE COURT: All right.

14 All right. Ms. Berard, my understanding is you have
15 an application for appointment of counsel?

16 MS. BERARD: Yes.

17 THE COURT: All right. Do you want to address that?

18 MS. BERARD: It should be in the pleadings that were
19 sent in.

20 THE COURT: Right.

21 MS. BERARD: I just haven't heard anything back
22 about it.

23 THE COURT: Well, I see that Judge Christo granted
24 your motion to seal. That was on the 26th.

25 MS. BERARD: Um-hum.



1 THE COURT: And I'm looking at her order and the
2 order says the motion to seal affidavit is granted. However,
3 the Court will not appoint counsel until the Defendant files a
4 request for an attorney form. Have you filed that form?

5 MS. BERARD: Yes.

6 THE COURT: Okay. I don't see a copy of the form.
7 But I see an affidavit.

8 MS. BERARD: I sent in the financial affidavit. Is
9 that --

10 THE COURT: All right. There is a financial
11 affidavit contained in the court file. It's an affidavit
12 (indiscernible) it was received on June 21st.

13 MS. BERARD: Okay.

14 THE COURT: Okay? So that affidavit was received
15 and then Judge Christo issued that order knowing that you
16 hadn't filed the application for attorney form. And then I
17 see, looking at Judge Christo's order, excuse me, Judge
18 Zaino's order yesterday, it says Defendant has failed to
19 timely file the request for lawyer form which is what Judge
20 Christo referred to in her order.

21 So my question to you is have you filed the request
22 for a lawyer form? I have a copy of it here I believe.

23 MS. BERARD: I'm pretty sure I did this. Unless
24 this looks the same as the affidavit.

25 THE COURT: The affidavit I have does not look the



1 same. And in fact --

2 MS. BERARD: Okay. Then I did --

3 THE COURT: -- in fact, it has questions there on
4 the back that are deleted on the form that was filed.

5 MS. BERARD: No, I did -- I did fill this out.
6 Pretty sure.

7 THE COURT: Okay. Well, I mean, I've reviewed your
8 financial affidavit. From the looks of the financial
9 affidavit, counsel will be appointed to represent you if you
10 file the request for lawyer form.

11 MS. BERARD: Okay.

12 THE COURT: That's the issue. Reviewing the
13 other -- the judges -- the two orders from the two judges,
14 that's what it appears to me.

15 MS. BERARD: Okay. And so is -- are they going on
16 the dual -- the pleading that was just sent in yesterday for
17 the court appointed private counsel?

18 THE COURT: Well, the initial issue is whether you
19 filled out the right form. That's what it comes down to.

20 MS. BERARD: Um-hum.

21 THE COURT: If you filled out the right form then
22 the responses to the form are essentially the same as they are
23 in the affidavit then I would assume counsel will be appointed
24 to represent you. But counsel would be appointed to represent
25 you through the usual procedure in New Hampshire which is the



1 form goes to the Public Defender's Office and it gets reviewed
2 for conflicts and then determinations are made as to where it
3 should go from there.

4 MS. BERARD: Okay.

5 THE COURT: What you need to do is make sure that
6 you've -- and you can review this with the clerk's office
7 afterwards actually but just make sure you filed the right
8 form if you didn't file the right form.

9 MS. BERARD: Okay.

10 THE CLERK: No. This is just a request for an
11 attorney form.

12 THE COURT: Straight request for attorney form.

13 MS. BERARD: Okay.

14 THE COURT: What I've got in the file is an
15 affidavit that omits a good portion of the second page. At
16 least half of the second page questions that are contained on
17 the second page of the request for an attorney form.

18 MS. BERARD: Okay.

19 THE COURT: See? I looked at the affidavit. I
20 don't know any reason why you can't have counsel appointed.

21 MS. BERARD: So will this motion be gone over for
22 the dual one?

23 THE COURT: The fundamental issue is to get the
24 right form in.

25 MS. BERARD: And then I'll find out?



1 THE COURT: You get the right form in and you're
2 eligible for appointed counsel, it will be submitted through
3 the process through the Public Defender's Office in New
4 Hampshire. I am not aware of a mechanism that will allow for
5 what you've requested in the motion that you filed yesterday
6 but then again the motion is premature to some extent because
7 we don't have a determination as to eligibility for assigned
8 counsel --

9 MS. BERARD: Okay.

10 THE COURT: -- or for appointed counsel.

11 MS. BERARD: Okay.

12 THE COURT: Do you know what I'm saying?

13 MS. BERARD: Um-hum.

14 THE COURT: Okay. And I mean, we could schedule a
15 hearing I assume on that motion for court appointed private
16 counsel at state expense but I'm not aware of a mechanism to
17 do that.

18 MS. BERARD: Okay.

19 THE COURT: Specific mechanism in New Hampshire to
20 do it. Public defenders are generally the counsel that are
21 appointed and then if there's a conflict with the Public
22 Defender's Office then it goes out to a private attorney.

23 MS. BERARD: Okay.

24 THE COURT: That's essentially the way the process
25 works.



1 MS. BERARD: So should I set a hearing for that?

2 THE COURT: I think what I would do is before, yeah,
3 you probably need a separate hearing on the motion for court
4 appointed private counsel at state's expense. I don't -- I'm
5 not aware of any way that I can grant the motion.

6 MS. BERARD: Okay.

7 THE COURT: You may have other documentation or
8 concerns that you may wish to present at a hearing.

9 MS. BERARD: Okay.

10 THE COURT: Okay? And I don't know. This was
11 submitted on the 6th. I don't know that we've received a
12 response from the State on this either.

13 MR. VENTURA: I haven't even seen it.

14 THE COURT: You haven't seen it?

15 The State hasn't seen the motion. They have 10 days
16 to respond.

17 MS. BERARD: Okay.

18 THE COURT: So it's premature. And you do -- did
19 you provide the State with a copy?

20 MS. BERARD: Yes.

21 THE COURT: You say it will be sent?

22 MS. BERARD: It was sent. And it was received.

23 THE COURT: All right. So Attorney Ventura, when
24 you receive a copy of that you can file the response.

25 Anything else we need to deal with today?



1 MR. VENTURA: I just want to make sure that we're
2 clear that she must fill out the required form for request --

3 THE COURT: Well, that's what both Judge Christo --
4 that's Judge Christo's initial order and then the order that
5 was issued yesterday by the second judge indicates that you
6 haven't filed the right form.

7 THE CLERK: So here's the request for an attorney
8 form. It would need to be filled out.

9 MS. BERARD: Thank you.

10 THE COURT: If you meet the financial criteria,
11 counsel will be appointed to represent you. This is a Class A
12 misdemeanor.

13 MS. BERARD: Um-hum.

14 THE COURT: You have a right to appointed counsel if
15 you can't do it. Okay?

16 MS. BERARD: Yep.

17 THE COURT: All right. That concludes the hearing.
18 I'd suggest that you fill the form out right into the clerk's
19 office. Have a conversation with them and then the State will
20 have an opportunity to respond. This is Defendant's motion
21 for court appointed private counsel at state expense. The
22 State will have an opportunity to respond to that as it was
23 only filed two days ago.

24 MS. BERARD: Okay.

25 THE COURT: And if a hearing is indicated then a



1 hearing will be scheduled.

2 MS. BERARD: Okay. Thank you.

3 THE COURT: And I would assume the trial will be
4 rescheduled.

5 MS. BERARD: Correct.

6 THE COURT: A new date will come out for trial.

7 MS. BERARD: That was the -- oh, that was supposed
8 to be today. The trial.

9 THE COURT: Yeah.

10 MS. BERARD: Okay.

11 THE COURT: All right. If there's no further
12 business, that concludes the hearing.

13 MS. BERARD: Thank you.

14 MR. VENTURA: Thanks, Your Honor.

15 THE BAILIFF: All rise.

16 (Proceedings concluded at 1:12 p.m.)
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